

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 99-CR-80796-DT

RODNEY RICE,

Defendant.

**ORDER GRANTING “MOTION TO DISMISS ATTORNEY AND APPOINT NEW
COUNSEL” AND GRANTING “MOTION TO PROCEED *IN FORMA PAUPERIS*”**

Pending before the court are two motions filed by Defendant Rodney Rice: a “Motion to Dismiss Attorney and to Appoint New Counsel” and a “Motion to Proceed *In Forma Pauperis*,” both filed on May 17, 2006. Defendant’s attorney filed a response to the “Motion to Dismiss Attorney. . .,” agreeing to the relief sought, and the government has not filed any opposition brief to either of Defendant’s motions.

First, inasmuch as both Defendant and his attorney desire to terminate their attorney-client relationship, the court will grant Defendant’s motion to “dismiss” his attorney. Moreover, the court is persuaded that Defendant is entitled to proceed on appeal *in forma pauperis*, and that his is also entitled to court-appointed counsel. Under 28 U.S.C. § 1915, this court may authorize a proceeding,

without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

28 U.S.C. § 1915(a)(1). An appeal may not be taken *in forma pauperis*, however, “if the trial court certifies in writing that it is not taken in good faith.” § 1915(a)(3).

Here, Defendant has submitted the requisite affidavit, and the court is satisfied that *in forma pauperis* status is warranted. The court also finds that the appeal is taken in good faith. The “good faith” standard is satisfied if the issues raised on appeal are arguable on the merits and therefore not frivolous; a showing of probable success is not required. *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition to appeal *in forma pauperis* must be granted.” *Id.* (citing *Howard*, 707 F.2d at 220).

For the reasons stated above, IT IS ORDERED that Defendant’s “Motion to Dismiss Attorney and to Appoint New Counsel” [Dkt # 343] and “Motion to Proceed *In Forma Pauperis*” [Dkt. # 344] are GRANTED.

IT IS FURTHER ORDERED that the Federal Defender Office, 22nd Floor, 2255 Penobscot Building, Detroit, Michigan, 48226, telephone number (313) 961-4150, is APPOINTED to represent Defendant in this case. Such representation shall continue unless terminated by (1) order of the court; (2) appointment of substitute counsel; or (3) appearance of retained counsel.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 28, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 28, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522